

ORDINANCE NO. 17-1989

AN ORDINANCE AMENDING THE FRANCHISE AGREEMENT BETWEEN LONE STAR GAS COMPANY AND THE CITY OF ABILENE; PROVIDING FOR FRANCHISE FEE; AND CALLING A PUBLIC HEARING.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS:

PART 1: That Sections 1, 2, 3, 5, 6, 8, and 9a of the Franchise Ordinance No. 341 and Section 4 of the Franchise Ordinance No. 32-1981, as set out in Exhibit A attached hereto and made a part of this ordinance for all purposes, shall remain in full force and effect.

PART 2: That Sections 7 and 9 of the Franchise Ordinance No. 341, are hereby amended to read as provided in Exhibit B, attached hereto and made a part of this ordinance for all purposes.

PART 3: In the event any other ordinance or resolution prior to the date of this amendment shall conflict with the terms of this ordinance, upon the effective date of this ordinance, this ordinance shall control. It is specifically provided that there shall be no exemptions to the franchise fee after March 14, 1988, except for the exclusion of receipts derived from the sale of gas to City, and any and all resolutions and provisions providing for exemptions to the franchise fee are null and void and of no legal effect after March 14, 1988.

PART 4: The terms and provisions of the amendatory ordinance shall be deemed to be severable, and if the validity of any section, sentence, clause or phrase of this amendatory ordinance should be declared to be invalid, the same shall not affect the validity of any other section, sentence, clause or phrase of this amendatory ordinance.

PART 5: That the City Council of Abilene agrees to waive any and all claims for the collection or payment of additional franchise fee on gas supplied by Lone Star Gas for Dyess Air Force Base prior to March 14, 1988; if and only if Lone Star Gas Company files its written acceptance to this franchise amendment within sixty (60) days after its final passage and approval by the City Council. After acceptance by Lone Star Gas Company and final passage by the City Council, the terms and provisions hereof shall be binding upon the City and Lone Star Gas Company, their successors and assigns.

PASSED ON FIRST READING THIS 13 DAY OF April, 1989.

00037

After said passage on first reading, a notice of time and place where and when said ordinance would be given a public hearing and considered for second and final passage was published in the Abilene Reporter-News, a daily newspaper of general circulation in the City of Abilene, said publication being on the 6 day of May, 1989. After an opportunity for the public to be heard, said ordinance was passed on second and final reading by the affirmative vote of five (5) Council Members.

This Franchise Ordinance Amendment shall become effective thirty (30) days after this passage on second and final reading.

PASSED ON SECOND AND FINAL READING THIS 11 DAY OF May, 1989.

ATTEST:

Op Moore
CITY SECRETARY

Dale Ferguson
MAYOR

APPROVED:

Hans Cayce
CITY ATTORNEY

Exhibit A

ORDINANCE NO. 17-1989

SECTION 1. That the City of Abilene, Texas, hereinafter called "City," hereby grants to Lone Star Gas Company, a corporation hereinafter called "Company," its successors and assigns, consent to use and occupy the present and future streets, alleys, highways, public places and thoroughfares of the City for the purpose of laying, maintaining, constructing, operating and replacing therein and thereon pipelines and all other appurtenant equipment needed and necessary to deliver and sell gas to persons, firms and corporations, including all the general public, within the City's corporate limits and the environs thereof, said consent being granted for a term of twenty-five years from and after the effective date of this ordinance.

SECTION 2.. Company shall lay, maintain, construct, operate and replace its pipes, mains, laterals and other equipment so as to comply with the ordinances, rules and regulations of the City, and so as to interfere as little as possible with traffic, and shall promptly clean up and restore to an approximate original condition, at its cost, all thoroughfares and other surfaces which it may disturb. The location of all mains, pipes, laterals and other appurtenant equipment shall be fixed under the supervision of the City Council or an authorized committee or agent appointed by said Council. The City shall retain all of the powers of regulation of its streets and alleys given to it either by the Constitution of this State, by general law or charter.

SECTION 3. When Company shall make or cause to be made excavations, or shall place obstructions, in any street, alley or other public place, the public shall be protected by barriers and lights placed, erected and maintained by Company; and in the event of injury to any person or damage to any property by reason of the construction, operation or maintenance of the gas distributing plant or system of Company, Company shall indemnify and keep harmless City from any and all liability in connection therewith. Company shall repair and clean up and restore within a reasonable time to an approximate original condition, all streets, alleys and public places disturbed during the construction and repair of its gas distributing system; and shall maintain the same to the satisfaction of the City Council, or of any City official to whom such duties have been or may be delegated, for one year from the date the surface of said street, alley or public place is broken for such construction or maintenance work, after which time the responsibility for the maintenance shall become the duty of the City. No street, alley, highway or public place shall be encumbered for a longer period than shall be necessary to execute the work.

"SECTION 4 - In addition to the rates charged for gas supplied, Company may make and enforce reasonable charges, rules and regulations for service rendered in the conduct of its business including a charge for services rendered in the inauguration of natural gas service, and may require, before furnishing service, the execution of a contract therefor. Company shall have the right to contract with each customer with reference to the installation of, and payment for, any and all of the gas piping from the connection thereof with the Company's main in the streets or alleys to and throughout the consumer's premises. Company shall own, operate and maintain all service lines, which are defined as the supply lines extending from the Company's main to the customer's meter where gas is measured by Company. The consumer shall own, operate, and maintain all yard lines and house piping. Yard lines are defined as the underground supply lines extending from the point of connection with Company's customer meter to the point of connection with consumer's house piping."

SECTION 5. Company shall not be required to extend mains longitudinally on any street more than seventy-five (75) feet for any one consumer of gas; nor shall Company be required to connect consumers to intermediate or high-pressure lines.

SECTION 6. Company shall be entitled to require from each and every consumer of gas, before gas service is commenced, a deposit of twice the amount of an estimated average monthly bill, which said deposit may be retained by Company until service is discontinued and all bills therefor have been paid. Company shall then return said deposit to the consumer, together with six percent (6%) interest thereon from the date of said deposit up to the date of discontinuance of service. Company shall be entitled to apply said deposit, with accrued interest, to any indebtedness owed Company by the consumer making the deposit.

Exhibit A
ORDINANCE NO. 17-1989

SECTION 8. Company shall furnish reasonably adequate service to the public at reasonable rates and charges therefor; and Company shall maintain its property, equipment and appliances in good order and condition. It is expressly understood and agreed that none of the lawful powers which said City may now have, or which may hereafter be granted to it by lawful authority to regulate rates and the kind and quality of service to be rendered by the Company to its patrons, shall be surrendered or impaired by this franchise, but all such powers are hereby expressly reserved to said City.

SECTION 9a. Should the Company fail to render any annual report of the gross receipts, as provided in Section 9, and pay the compensation therein provided, the City may terminate this agreement after thirty days' written notice to the Company, setting out the reason for such termination, but Company shall have the right to comply with the provisions of Section 9 within the thirty day period and thereby prevent the termination. And in addition to the right of forfeiture the said City shall have the right to collect said franchise payment due and owing the City by all legal and equitable remedies given by law for the collection of debts.

Exhibit B

ORDINANCE NO. 17-1989

SECTION 7: The rights, privileges and franchise granted by this ordinance are not to be considered exclusive, and City hereby expressly reserves the right to grant, at any time, like privileges, rights and franchises as it may see fit to any other person, firm or corporation for the purpose of furnishing gas for light, heat and power to and for City and the inhabitants thereof. To the extent permitted by law, if any other franchise, permit, or consent be given to another person or corporation to sell, deliver, or transport gas within the City, such person or corporation shall not be granted more favorable terms and conditions, including compensation to the City, than are required of Company herein.

SECTION 9: In consideration for the rights and privileges herein granted, Company, its successors and assigns, shall pay to the City during the term of this franchise, a franchise fee in the amount of four percent (4%) of all the following:

1. Gross receipts received by the Company from the sale of gas, and fees for the transportation of gas; and,
2. Purchase price paid by customers for gas consumed within the corporate limits of the City and transported by the Company but not sold by the Company.

The only exclusion to the franchise fee shall be gas sold to the City.

The franchise fee shall be paid, on or before the first day of April of each year for the preceding calendar year and ending with the first day of April of the year next succeeding the termination date of this franchise, for the rights and privileges herein granted to the Company, including expressly, without limitation, the right to use the streets, alleys, and public ways of the City. The compensation set forth in this paragraph shall be paid in lieu of any license, charge, fee, street or alley rental, or other character of charge for the use and occupation of the streets, alleys, or public ways of the City or any occupation or privilege tax.

Such annual payment shall not be in lieu of the usual general or special ad valorem taxes upon real and personal property or any sales tax which, in either case, the City is now or may become authorized to levy and impose. It is agreed that all payments made to the City for this franchise shall become due and payable at the City Secretary's office in the City of Abilene, Texas.

In order to determine the charge for the use of the City streets and alleys, each transportation customer of the Company shall disclose to the Company the purchase price of said gas on a

quarterly basis. If the transportation customer refuses to disclose the purchase price of transported gas so that the fee cannot be accurately calculated and collected from the customer, then the Company shall not be obligated to pay the gross receipts fee on the purchase price of such transportation gas.

If the transportation customer refuses to pay the franchise fee on gas not sold by the Company and the Company is unsuccessful in collecting the franchise fee, the Company may deduct from the city's franchise fee and shall be given credit for the amount of franchise fee that the Company has not been paid.

The City shall be authorized to file suit in its and the Company's behalf to collect the franchise fee on gas not sold by the Company.

In order to determine the gross receipts received by Company from the sale of gas within the corporate limits of City, and the fees received by the Company for the transportation of gas within the Company's lines, the Company agrees that on the same date that payments are made, as provided in Section 9 herein, it will file with the City Secretary a sworn report showing the fees received by the Company for the transportation of gas within the Company's lines into the corporate limits of the City, and the gross receipts received by the Company from the sale of gas to the residential, commercial, and industrial consumers of the Company within the corporate limits of said City, including the customer purchase price of all gas transported by the Company into the corporate limits of the City, for the calendar year preceding the date of payment. The City may, if it sees fit, have the books and records of the Company examined by a representative of said City to ascertain the correctness of the sworn reports agreed to be filed herein. In addition, Company shall furnish to the City a copy of any statement reflecting revenues in Abilene, Texas, furnished to the Texas Railroad Commission by Company for the year next preceding on or before April 1 of each year.

Upon request of the City, Company shall present any and all records, accounts, and books for inspection relative to the gross receipts of Company within the corporate limits of the City of Abilene, Texas.

Exhibit B

ORDINANCE NO. 17-1989

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

WHEREAS, there was finally passed and approved on May 11, 1989, Ordinance No. 17-1989 granting to Lone Star Gas Company, a Division of ENSERCH CORPORATION, a corporation, its successors and assigns, a franchise to furnish and supply gas to the general public in the City Abilene, Taylor County, Texas, for the transporting, delivery, sale and distribution of gas in, out of and through said municipality for all purposes, which is recorded in the Minute of the City Council of said City; and

WHEREAS, Section 5 of said ordinance provides as follows:

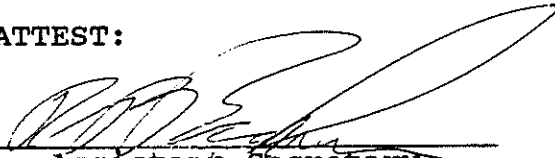
"SECTION 5: That the City Council of Abilene agrees to waive any and all claims for the collection or payment of additional franchise fee on gas supplied by Lone Star Gas for Dyess Air Force Base prior to March 14, 1988; and if and only if Lone Star Gas Company files its written acceptance to this franchise amendment within sixty (60) days after its final passage and approval by the City Council. After acceptance by Lone Star Gas Company and final passage by the City Council, the terms and provisions hereof shall be binding upon the City and Lone Star Gas Company, their successors and assigns."

AND, WHEREAS, it is the desire of Lone Star Gas Company, a Division of ENSERCH CORPORATION, the holder of the rights, privileges and grants under the aforesaid franchise ordinance, to comply with the above-quoted provisions of Section 5 thereof.


NOW, THEREFORE, premises considered, Lone Star Gas Company, a Division of ENSERCH CORPORATION, acting by and through its duly authorized officers, and within the time prescribed by Section 5 quoted above, does hereby agree to and accept the franchise granted to it by the above-described ordinance, in accordance with its terms, provisions, conditions and requirements and subject to the stipulations and agreements therein contained.

WITNESS THE EXECUTION HEREOF, on this the 31st day of May, 1989.

ATTEST:


Assistant Secretary


LONE STAR GAS COMPANY
A DIVISION OF
ENSERCH CORPORATION


Vice President

STATE OF TEXAS §
COUNTY OF TAYLOR §
CITY OF ABILENE §

I, Jo Moore City Secretary of the City Abilene, Taylor County, Texas, do hereby certify that the above and foregoing is a true and correct copy of a formal acceptance of a franchise ordinance finally passed and approved by said City on May 11, 1989, and of record in the Minutes of the City; and I do further certify that said acceptance has been duly presented to the City Council and filed in connection with and as a part of said franchise ordinance.

OF WHICH, witness my official signature and the seal of said City on this the 8 day of June, 1989.



City Secretary
City of Abilene, Texas